

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PABLO MENDOZA CHAVEZ,

Plaintiffs,

vs.

KINGS COUNTY, et al.,

Defendants.

1:20-cv-00532-GSA-PC

**ORDER FOR THE CLERK OF COURT
TO RANDOMLY ASSIGN A UNITED
STATES DISTRICT JUDGE TO THIS
ACTION**

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER, FAILURE TO
STATE A CLAIM, AND FAILURE TO
PROSECUTE
(ECF No. 23.)**

**OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS**

Pablo Mendoza Chavez (“Plaintiff”) is a Kings County Jail inmate proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on April 14, 2020. (ECF No. 1.) On July 29, 2021, the court screened the Complaint and dismissed it for failure to state a claim, with leave to amend within thirty days. (ECF No. 6.) The thirty-day time period has now expired and Plaintiff has not filed an amended complaint or otherwise responded to the finding and recommendations.¹

¹ On August 16, 2021, the United States Postmaster returned the findings and recommendations to the court with the notation “undeliverable, inmate not here, return to sender.” (Court record.) Plaintiff has not notified the court of any change in his address. Absent such notice, service at a party’s prior address is fully effective. Local Rule 182(f).

1 Therefore, it will be recommended that this case be dismissed for Plaintiff's failure to comply
2 with the court's order, failure to state a claim, and failure to prosecute. The Clerk shall be directed
3 to randomly assign a United States District Judge to this action.

4 In determining whether to dismiss this action for failure to comply with the directives set
5 forth in its order, "the Court must weigh the following factors: (1) the public's interest in
6 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
7 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
8 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639,
9 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

10 "The public's interest in expeditious resolution of litigation always favors dismissal,"
11 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
12 action has been pending since April 14, 2020. Plaintiff's failure to respond to the Court's order
13 may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot
14 continue to expend its scarce resources assisting a litigant who will not comply with the court's
15 orders. Thus, both the first and second factors weigh in favor of dismissal.

16 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
17 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently
18 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it
19 is Plaintiff's failure to file an amended complaint that is causing delay. Therefore, the third factor
20 weighs in favor of dismissal.

21 As for the availability of lesser sanctions, at this stage in the proceedings there is little
22 available to the Court which would constitute a satisfactory lesser sanction while protecting the
23 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this
24 circumstance are of little use, and given the early stage of these proceedings, the preclusion of
25 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
26 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction
27 of dismissal with prejudice.

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1 Finally, because public policy favors disposition on the merits, this factor will always
2 weigh against dismissal. Id. at 643.

3 Accordingly, **IT IS HEREBY ORDERED** that:

4 1. The Clerk of Court shall randomly assign a United States District Judge to this
5 action; and

6 2. The Court **HEREBY RECOMMENDS** that this action be dismissed based on
7 Plaintiff's failure to obey the Court's order issued on July 29, 2021, failure to prosecute, and
8 failure to state a claim.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
11 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
12 written objections with the court. Such a document should be captioned "Objections to
13 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
14 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
15 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
16 (9th Cir. 1991)).

17
18 IT IS SO ORDERED.

19 Dated: September 2, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE